

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
AT NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#  
DATE FILED: 8/9/2010

CRIMINAL ACTION NO. S2-03-Cr-109(GBD)

UNITED STATES OF AMERICA,  
Plaintiff,

v.

PHILLIP JAMES CUMMINGS,  
Defendant.

///

MOTION TO WAIVE RESTITUTION  
OR TO CONVERT RESTITUTION  
TO A CIVIL JUDGMENT

Hon. George B. Daniels, Judge

INTO THE COURT COMES NOW, Phillip Cummings, Sui Juris, without the assistance of Counsel and respectfully moves this most Honorable Court to grant his Motion to Waive Restitution or to Convert Restitution to a Civil Judgment. IN support thereof he will aver:

1). On January 11, 2005 the Defendant accepted responsibility for and plead guilty to the charge of conspiracy and wire fraud, fraud in connection with identification documents on December 21, 2002;

2). Although the Court imposed a term certain, (168 months) in recognition of the minimal role the Defendant played in the crime, there was an Order for restitution in an amount exceeding \$15,000,000.00;

3). The Order did not specify what percentage of this amount was to be attributed to and paid back by the Defendant;

4). The Defendant is a National of Great Britain and has been notified by the Embassy that he is eligible for a "treaty transfer" back to his home Country;

RECEIVED  
SDNY PRO SE OFFICE  
2010 AUG -9 PM 5:04

PG.2

5) Just a few days ago, the Defendant was notified by the Federal Bureau of Prisons that he is "deportable", see attached Exhibit "A";

6).The Defendant is without funds to defray the costs of the restitution Order imposed and in support of that contention has filed a Financial Statement with the Financial Litigation Unit at 86 Chambers Street, New York, N.Y., 10007;

7).The Defendant realizes this is a very unusual request, however, it is made in good faith as Great Britain has indicated it will only approve "treaty transfers" that are not attached to and Order of Restitution;

8). The Defendant wishes to be closer to his family and loved ones and the only way he will be allowed to prequest a "treaty transfer" is if the Court grants the requested relief;

9). The Defendant is not attempting to shirk his responsibility as is evidenced by his plea of guilty. The Defendant is merely asking the Court to construct a method whereby the Court will be satisfied and the Defendant may apply for his "treaty transfer;

10). The Defendant will submit another Financial Statement to the Financial Litigation Unit and will abide by whatever stipulations the Court deems appropriate in granting this request;

11). The Defendant has utilized his time wisely while incarcerated. He has been certified as a Dental Technician and is now learning a trade in the Institutional Power Plant;

PG. 2

PG. 3

The Defendant would like to briefly address his health issues as he is now classified as a Care Level 3 (out of 4 being the highest) inmate.

HEALTH ISSUES

12). The Defendant sought medical downward departure pursuant to USSG §5H.1(4) and was denied however the Court was so gracious as to designate the Defendant to a Medical Center;

13). The Defendant is diagnosed with Dilated Cardiomyopathy and Congestive Heart Failure. The Defendant does not wish to speak down about medical care, but he would ask the Court to take into consideration that this is actually a "medical referral center" as opposed to a Medical Center;

14). The Defendant's major concern at this point is to be able to serve the remainder of his sentence in closer proximity to his family and loved ones. The Defendant would take leave here to thank the court in advance for any consideration in this very important matter

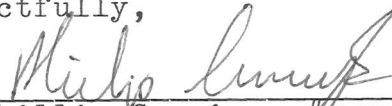
15). Again, the Defendant would assert that he will abide by any stipulations, conditions, or prerequisites the Court deems necessary for consideration of the relief requested herein.

PG. 3

PG.4

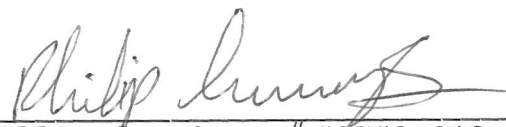
WHEREFORE, based upon the foregoing, the Defendant prays this most Honorable Court will grant his Motion and Waive the Restitution or in the alternative Convert the Restitution Order into a ten (10) year Civil Judgment. The Defendant prays this Court will direct the Clerk of the Court to forward a copy of any Order in this matter to Offender Records, Federal Medical Center 3301 Leestown Road, Lexington, KY., 40511, and what other relief the Court deems appropriate.

Respectfully,

  
Phillip Cummings #53752-019  
Federal Medical Center/HCU  
P.O. Box 14500  
Lexington, KY., 40512-4500

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Motion was mailed, postage prepaid, to the Office of the United States Attorney, Hon. Michael J. Garcia, at U.S. Courthouse Annex, One St. Andrews Plaza, New York, NY., 10007, this 6 day of August, 2010.

  
Phillip Cummings #53752-019

PG. 4



BP-S394.058 DETAINER ACTION LETTER CDFRM

MAR 03

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Oakdale Processing Center Federal Alien Detention Center DHS/ICE/CAP 1010 East Whatley Road Oakdale, La. 71463		The Federal Medical Center 3301 Leestown Road Lexington, KY. 40511 Ph.. 859-255-6812, ext. 5304	
		Date 08-02-2010	
Case #A 029 498 436	Inmate's Name Cummings, Phillip	Fed Reg No. 53752-019	DOB/SEX/RACE 09-01-1969/M/B
Aliases:		Other No. FBI# 563097XB2	

The below checked paragraph relates to the above named inmate:

- ☐ This office is in receipt of the following report: \_\_\_\_\_, will you please investigate this report and advise what disposition, if any, has been made of the case. If subject is wanted by your department and you wish a detainer placed, it will be necessary for you to forward a certified copy of your warrant to us along with a cover letter stating your desire to have it lodged as a detainer. If you have no further interest in the subject, please forward a letter indicating so.
- ☒ A detainer has been filed against this subject in your favor charging possible deportation. Release is tentatively scheduled for 05-21-2017, however, we will notify you no later than 60 days prior to actual release. To check on an inmate's location, you may call our National Locator Center at: 202-307-3126 or check our BOP Inmate Locator Website at www.bop.gov.
- ☐ Your detainer against the above named has been removed in compliance with your request.
- ☐ Your detainer warrant has been removed on the basis of the attached \_\_\_\_\_. Notify this office immediately if you do not concur with this action.
- ☐ Your letter dated \_\_\_\_\_ requests notification prior to the release of the above named prisoner. Our records have been noted. Tentative release date at this time is \_\_\_\_\_.
- ☐ I am returning your \_\_\_\_\_ on the above named inmate who was committed to this institution on \_\_\_\_\_ to serve \_\_\_\_\_ for the offense of \_\_\_\_\_. If you wish your \_\_\_\_\_ filed as a detainer, please return it to us with a cover letter stating your desire to have it placed as a hold or indicate you have no further interest in the subject.
- ☐ Other:

Sincerely, *PA Burrell*  
Jean Myers  
Supervisor Correctional Systems Specialist

Original - Addressee, Copy - Judgment & Commitment File; Copy - Inmate; Copy - Central File (Section 1); Copy - Correctional Services Department

(This form may be replicated via WP)

(Replaces BP-394(58) dtd FEB 1994